

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)	
)	No. 2:07-CR-90
V.)	District Judge Greer
)	Magistrate Judge Inman
TINA ALLEN)	

REPORT AND RECOMMENDATION

This defendant has filed a motion to dismiss, Doc. 130, in which she asserts that all the information supplied to her during discovery is “insufficient to establish probable cause or to convict [her] of the alleged charges.”

The Grand Jury presumptively found probable cause to believe that defendant more likely than not committed the offenses with which she is charged in the indictment; otherwise, a True Bill would not have been returned. No judge at the pretrial stage may second-guess the Grand Jury and declare that there was or is no probable cause to support the charges in the indictment.

If, after the United States presents its proof-in-chief, the defendant contends that the evidence is insufficient to sustain a conviction, she may file a motion pursuant to F.R.Crim.P. 29(a) before the case is submitted to the jury. Similarly, the district judge on his own motion can consider whether the evidence is insufficient to sustain a conviction. In any event, the instant motion is premature and should be denied.¹

Respectfully submitted,

¹Any objections to this report and recommendation must be filed within ten (10) days of its service or further appeal will be waived. 28 U.S.C. § 636(b)(1)(B) and (C). *United States v. Walters*, 638 F.2d 947-950 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

s/ Dennis H. Inman
United States Magistrate Judge